Any person asserting that he is the owner of such goods and that they are not liable to forfeiture may personally or by his agent, authorised in writing in that behalf, give notice to the Senior Officer of Customs that he claims the goods. Upon receipt of such notice the Senior Officer of Customs is required to refer the claim to the Comptroller who is empowered to direct that the goods be released or he may direct the Senior Officer of Customs to refer the matter, by way of Information, to the Court of a First Class Magistrate for decision. The Magistrate then issues a summons requiring the person asserting that he is the owner of the goods and the person from whom they were seized to appear before him. If at the conclusion of the hearing of the matter the Magistrate is satisfied that the goods are liable to forfeiture under the Enactment he is empowered to order that they be forfeited.

If no Order for forfeiture is made and no person has asserted that he is the owner of the goods and that they are not liable to forfeiture, sub-section (ii) of section 108 of the Enactment provides that the goods shall be "taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure".

Hard cases can be dealt with *ex gratia* under sub-section (vi) of section 108 of the Enactment which enables the High Commissioner to order any goods seized under the Enactment whether forfeited or not to be delivered to the proprietor thereof upon such terms and conditions as he may deem fit.

To sum up, in our view, sub-section (ii) of section 106 and sub-section (v) of section 108 of the Enactment only enable the Courts to order the forfeiture of goods, and that action can only be taken if it is proved to the satisfaction of the Court that they were liable to seizure under the Enactment. If goods seized were not, in fact liable to seizure under the Enactment, their release should follow as a matter of law. The power to order the release of goods liable to forfeiture is clearly and unequivocally vested only in the executive.

For the reasons I have already given the sentence imposed by the Magistrate is restored.

Sentence restored.

THE COMPTROLLER OF INCOME TAX v. G. B. ROCHE.

[Orig. Civ. Juris. (Jobling, J.) December 4, 1950]

[Penang — Income Tax Appeal No. 2 of 1950]

Income Tax — Income Tax Ordinance, 1947, s. 31(4) — Employment on probation in 1947 — Statutory income for year of assessment 1948.

This was an appeal from the decision of the Board of Review.

The respondent came to Malaya on the 29th June, 1947, for the purpose of taking up employment with the Pilots Association, Penang. He was employed on probation until 1st August, 1947, when he was offered and accepted a partnership in the Pilots Association as from 1st of August, 1947 and carried on as a partner during the year of Assessment, 1948. Under section 31(4) of the Income Tax Ordinance, the respondent was assessed for income tax upon his income from 1st August, 1947 to 31st July, 1948. Respondent appealed against this assessment and the Board of Review allowed his appeal holding that the probationary period from 29th June, 1947 to 31st July, 1947 was an essential condition of the ultimate partnership and that the employment must therefore be considered to have commenced on 29th June, 1947 and the respondent assessed on his total income for 12 months from that date.

Held, on appeal, that the respondent had one kind of employment from the 29th June, 1947 to the 31st July, 1947 and on 1st August, 1947, he commenced to carry on a different employment and he carried it on throughout the year of assessment and therefore he was correctly assessed for the year of assessment 1948, for full year's income as from the 1st August, 1947.

INCOME TAX APPEAL.

J. V. M. Shields (Federal Counsel), for the appellant.

C. O. Lim for the respondent.

Cur. Adv. Vult.

Jobling, J. : — The respondent in this case came to Malaya on the 29th June, 1947, for the purpose of taking up employment with the Pilots Association, Penang. He was employed and undertook some duties in connection with this Association until 1st August, 1947, when he was offered and accepted a partnership in the Pilots Association as from the 1st August, 1947. A partnership deed between himself and the existing partners in the Association with effect from 1st August, 1947, was drawn up, and this partnership deed has been put in in evidence. On these facts respondent was assessed by the Income Tax Department under section 31(4) of the Income Tax Ordinance, 1947, on his income for the 12 months from 1st August, 1947, i.e., the commencement of his partnership. This was an assessment in respect of the year commencing on 1st January, 1948. Respondent appealed against this assessment and the Board of Review allowed his appeal holding that the probationary period from 29th June,

1947, to 31st July, 1947, was an essential condition of the ultimate partnership and that the employment must therefore be considered to have commenced on 29th June, 1947, and the respondent assessed on his total income for 12 months from that date. Against that decision the appellant has appealed to this Court.

The matter has been argued at some length by Mr. C. O. Lim, but I think the provisions of the Income Tax Ordinance are quite clear. Under sub-section (1) of section 31 of the Income Tax Ordinance, 1947, it is provided that the statutory income of any person shall be the full amount of his income for the year preceding the year of assessment from each source of income possessed by him during the year of assessment. But this sub-section is expressly stated to be subject to the other provisions of the section. Sub-section (4) of the section provides a special basis of assessing the statutory income of any person who commenced to carry on any trade, business or employment within the year preceding the first year of assessment, that is, in this case within the year 1947. The basis laid down is that he should be assessed on the amount of income for one year from the date of commencing such trade profession or employment. This is a specific provision applying to the particular facts of this case. The respondent had one kind of employment from the 29th June, 1947, to the 31st July, 1947, and on the 1st August, 1947, he commenced to carry on a different employment and he carried it on throughout the year of assessment. There is a clear provision for the particular facts in this case and there is no doubt that the appellant was correct in assessing the respondent for the full year's income as from the 1st August, 1947, under section 31(4).

The appeal is allowed. Respondent is assessable in respect of the year 1948 on the income received by him during the 12 months commencing on the date of his partnership 1st August, 1947.

Costs agreed at $150 to be paid by respondent.

Appeal allowed.